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Wednesday, 5 June 2024

Dr Kris Funston
Executive General Manager
Australian Energy Regulator
GPO Box 3131, Canberra ACT 2601

Dear Dr Funston

Consultation on draft Revenue determination guideline for non-contestable projects

Transgrid welcomes the opportunity to respond to the Australian Energy Regulator's (AER) draft Revenue determination guideline for NSW non-contestable projects (**draft guideline**) published on 7 May 2024.

Transgrid operates and manages the high voltage electricity transmission network in NSW and the ACT, connecting generators, distributors and major end users. Our transmission network is at the heart of the National Electricity Market and is vital to achieving net-zero emissions targets, by connecting geographically and technologically diverse low-cost renewable generation.

Transgrid supports the AER's efforts to improve and streamline the non-contestable revenue determination guidelines. However, we do not support the removal of the draft determination or the significantly reduced consultation periods allowed for under the AER's propped changes. The AER's draft determination is a key decision gate that provides investment certainty and confidence to network operators and consumers that the AER has fully considered a proposed revenue proposal. Additionally, Transgrid considers it important that the network operator and other stakeholders, including consumer groups, have a reasonable opportunity to respond to the AER's findings, as provided for in the existing process.

Transgrid strongly recommends that only administrative changes are made to align these draft guidelines with the updated financeability rules under the National Electricity Rules (NER). Prior to detailed and genuine consultation on the approach to the financeability guidelines, the AER should not form any definitive views on its interpretation and application of the NER financeability test.

We look forward to further engagement with the AER in finalising updates to the draft guideline for use in upcoming non-contestable revenue determinations. If you have any questions on this letter, please feel free to contact me or Sam Martin at [REDACTED].

Yours faithfully

[REDACTED]

Monika Moutos,

General Manager, Regulation and Policy

Transgrid submission

We welcome the opportunity through this consultation to comment on specific issues before the AER issues a final guideline. We provide key areas of feedback below.

1. Introduction of a preliminary positions paper

The AER's draft guideline seeks to use the 126 business day timeframe for making non-contestable revenue determinations more efficiently, by removing the requirement for the AER to make a draft decision which covers all aspect of a determination and, instead, replacing it with a preliminary position paper that focuses on material and/or contentious issues.

The AER seeks to achieve this outcome by deleting clause 6A.12 in EII Chapter 6A¹, which would have the effect of removing the obligation on the AER to make, publish and consult on a draft decision, and the requirement for the Network Operator to submit a revised proposal to the AER. The AER's proposed approach includes the following key amendments to the process and timing of a non-contestable revenue determination as summarised in table 1 below.

Table 1 Draft guideline changes

Milestone	Existing guideline	Proposed draft guideline
Network Operator submits to the AER its revenue proposal and response to information notice	By the date specified in the Consumer Trustee's authorisation or Minister's direction or authorisation, or stated in contractual arrangements, for making a revenue determination.	No change.
AER conducts compliance and confidentiality checks and publishes compliant revenue proposal for public consultation and submissions.	Publish compliant revenue proposal upon completion of compliance check.	No change.
Submissions on Network Operator's revenue proposal close	14 business days from receipt of the Network Operator's revenue proposal.	Changed to 15 business days from the date of publishing the Network Operator's revenue proposal.
AER publication of draft determination (or preliminary positions paper)	AER draft determination published 64 business days from receipt of Network Operator's revenue proposal.	AER publishes preliminary positions paper approximately 55 business days from receipt of Network Operator's revenue proposal
Network Operator submits revised revenue proposal (or does not).	92 business days from date of receipt of Network Operator's revenue proposal.	Changed to remove the requirement to submit a revised revenue proposal.

¹ We understand this EII Chapter 6A is provided as part of the guideline to help inform stakeholders rather than formally existing as a formal NSW based variation from the NER for the EII Act.

Submissions on AER draft determination (or preliminary positions paper) and Network Operator's revised revenue proposal close. Material is published.	103 business days from date of receipt of Network Operator's revenue proposal.	Submissions on AER preliminary positions paper close 15 business days from the date of publishing the preliminary position paper.
AER publishes final determination and supporting analysis.	126 business days from date of receipt of Network Operator's revenue proposal.	No change.

The AER note the following reasons for proposing this amendment within its draft guideline:

- Given the short timeframe available under the EII framework, their experience has been that the formality of the current draft decision process can impact the quality of engagement on specific material and/or contentious issues. This can be addressed with the earlier publication of the positions paper.
- The revenue determination process under the EII Act is akin to the AER's assessment of contingent projects under the national framework where project costs are assessed and there is no requirement for a draft decision.
- The more streamlined process has the benefit of prioritising regulator and stakeholder attention towards the most important aspects of the revenue determination.
- The new process allows the AER to have greater assessment time to consider submissions received on the revenue proposal, gather further information from the Network Operator and assess issues relevant to our final decision.

Transgrid views on the preliminary positions paper proposal

Transgrid supports the AER's efforts to improve and streamline the non-contestable revenue determination guidelines. Specifically, we recognise that the Australian regulatory environment should strive to be as efficient and agile as possible in support of accelerating the required transmission investments to support Australia's energy transition.

Summary of proposed process changes

Transgrid has identified that the AER's proposed approach includes the following key amendments to the process and timing of a non-contestable revenue determination as shown in table 1 above:

- At least 1 additional day for initial stakeholder submissions on the revenue proposal.
- AER's preliminary position paper published 9 days sooner than the existing draft determination.
- Removal of the existing requirement for the Network Operator to submit a revised revenue proposal.
- Second period of public consultation reduced for:
 - Network operators by 13 business days from 28 business days on the AER's draft determination to a period of 15 business days on the AER's preliminary positions paper.
 - Other stakeholders by 24 business days from 39 business days on the AER's draft determination to a period of 15 business days on the AER's preliminary positions paper. Additionally, other

stakeholders now receive no opportunity for public consultation on the network operators revised revenue proposal.

Impact of the proposed change to remove the draft determination

Transgrid has concerns with the impact this proposal may have on key transmission infrastructure projects, and the potential for detrimental flow on impacts to consumers. A draft determination, as the AER notes in its draft guideline, would cover all aspects of the approach to making a revenue determination. The inclusion of this decision point in the regulatory process provides network operators with certainty on how the proposal has been considered, whilst enabling further engagement on material issues, and provides significant benefits compared to the existing NER approach (of a single final decision under the contingent project application (CPA) process).

In our view, the proposed changes create potential downside risk for stakeholders that are not drawn out in the AER's explanatory statement. Importantly, under the preliminary positions paper approach, if the AER's Board has not carried out a full and formal review, then network operators and consumer groups will be uncertain whether the AER has fully assessed the proposal in the preliminary positions paper and, therefore, face the risk that new issues emerge late in the decision-making process. Regardless of the final approach taken to this reform, we encourage direct engagement to explore opportunities to minimise this risk.

Without a full assessment and a formal draft determination, including full review and response on proposed revenue models, Transgrid is concerned this may reduce investor certainty and impact our ability to progress projects in a timely manner. It is likely that the reduced scope of the preliminary positions paper will delay internal executive and/or Board approval processes. It may also impact Transgrid's ability to meet commercial commitments required by the Infrastructure Planner or the Minister as part of contractual arrangements for the project. Each of these contribute to an increased likelihood for downstream project delays. This would not be in the interests of consumers, who are impacted by delays of critically important transmission infrastructure.

Impact of proposed changes to stakeholder engagement

Importantly, on improving stakeholder engagement under the proposed changes, the AER should clarify that there is a:

- 24 business day reduction in the time period stakeholders have available to review and respond to the AER's initial positions. This reduction from 39 to 15 business days, and removal of ability to comment on a network operator's revised revenue proposal, will impact consumers' ability to respond to the AER's identified issues in its preliminary position paper.
- 15 business day reduction for network operators responding to the preliminary position paper (which would replace the Draft Decision) is not supported. Transgrid considers it important that the network operator has a reasonable opportunity to respond to the AER's findings, as provided for in the current process which allows 28 business days.

This reduction in the allowed timeframes for stakeholder engagement more than outweighs the additional benefits of at least one additional day in the initial stakeholder consultation period and the potential 9 business day benefit of publishing the AER's initial response sooner. This additional time made available to

allow for the streamlined consultation is not long enough to justify the reduction in detail and certainty provided to the Network Operator from a draft decision.

Transgrid's recommendation on the preliminary positions paper

Given the above issues with the AER's proposed approach, Transgrid strongly recommends that the AER maintains the existing draft determination, whilst adjusting existing stakeholder consultation periods to achieve targeted improved outcomes.

Importantly, regardless of the approach taken, the AER should identify opportunities to mitigate the above issues that have the potential to reduce genuine stakeholder engagement and risk delays to projects. This could include formalising any existing practices of informal engagement throughout the determination process. Transgrid is keen to engage constructively with the AER on identifying no regret updates to the determination process that improve stakeholder engagement and support timely investment in critical infrastructure.

2. Financeability and concessional finance benefits

The AER also proposes changes in the draft guidelines to reflect the recent AEMC's final rules on concessional finance and financeability. These amendments are being made to ensure consistency with NER Chapter 6A and EII Chapter 6A through amendments to both the non-contestable guideline as well as EII Chapter 6A to reflect the new provisions in the National Electricity Rules (NER).

The AER notes that consistent with the proposed amendments to EII Chapter 6A, it intends that the NER financeability guideline, once developed by December 2024, will apply under the EII framework. The AER considers that while EII Regulation clause 47D(3) allows the AER to address financeability issues for EII projects, the NER changes will complement the provisions in the EII framework by:

- providing greater clarity and certainty on the AER's approach to assessing financeability
- ensure internal consistency between the NER and EII frameworks in amending the depreciation schedule for financeability.

Transgrid views on financeability

While the AEMC's recent rule on accommodating financeability in the regulatory framework is welcomed as a significant step forward, we maintain that it does not provide the certainty nor will it achieve its intended outcomes and therefore falls short of providing the confidence that investors need to proceed with the projects without Government support.

Transgrid understands that these changes to the NSW non-contestable revenue determination guidelines are largely administrative in nature by aligning the NSW guidelines to reflect the updated NER, as required by regulation, in that the AER is required to ensure NSW guidelines are as far as reasonably practicable

consistent with the NER.² Transgrid supports the majority of these proposed changes given they are administrative in nature.

However, we strongly recommend that the AER should not form any definitive views on its interpretation and application of how the financeability test should apply to the NSW guidelines before carrying out further detailed consultation through developing the financeability guidelines. This required consultation is needed to ensure that any interpretations of the NER, including that a financeability test under the EII Act would consider both NSW and national framework assets together, is properly understood and considered by stakeholders.

At this stage it is too early to provide a considered view on the AER's proposed interpretation of the financeability rules, given the significant uncertainty on how the financeability guideline could be developed. Without the financeability guideline, there is no understanding of the practical workability of the AER's proposed approach or any unintended consequences, thus it is important that the AER does not pre-empt the guidelines and associated consultation with this draft non-contestable guideline. Updates to this guideline should be limited to those that are administrative in nature prior to further detailed consultation on the financeability guideline.

Transgrid looks forward to engaging with the AER on developing the Financeability guidelines that will apply under the NER and in the NSW frameworks.

3. Non-contestable components of contestable augmentations

The EII Regulation was amended in January 2024 to create a framework for the AER to make revenue determinations for contestable augmentations. A contestable augmentation is a network infrastructure project carried out by a network operator to augment an existing network infrastructure project that is subject to a contestable revenue determination.

Under the EII Regulation, cost components of a contestable augmentation are determined through either:

- a result of a competitive assessment process (contestable costs)
- using an appropriate referenced costs process contained in the contractual arrangements for the existing network infrastructure project (referenced costs)
- by an AER assessment of the prudent, efficient and reasonable cost based on the application of our non-contestable Guideline (non-contestable costs).

After establishing an amount for each cost component, the AER must then combine the amounts into a revenue determination for the Network Operator.

As part of this consultation process, the AER has proposed amendments within the draft guidelines to include an explanation of how it will make a determination for a non-contestable cost component of a contestable augmentation. The AER's proposed changes to the draft guidelines are to apply a similar approach to assessment of non-contestable costs of a contestable augmentation as it does for non-

² EII Regulation 47A(3)

contestable revenue determinations. Noting, the EII Regulation requires the AER to take into account the contractual arrangements for the related project.

The AER is allowed 84 business days for contestable revenue determinations compared to 126 business days for non-contestable determinations. Given this the AER's has proposed it will take a truncated approach to assessing any non-contestable cost components, including only a single round of public consultation.

The AER will also update its revenue determination guidelines for NSW contestable network projects to set out how they will approach other elements of the contestable augmentation framework.

Transgrid views on the contestable augmentation updates

Transgrid understands that these guideline amendments are consistent with the EII Regulation amendment to create a framework for the AER to make revenue determinations for contestable augmentations. This includes aligning existing guideline approach and timelines for contestable and non-contestable costs assessments with respective elements of a contestable augmentation determinations.

Transgrid supports these changes and considers it will be important for the AER to engage upfront with Network Operators and consumer groups on its specific approach to these consultations.

4. Amendments to section 3 (pre-lodgement)

The AER will amend guidelines regarding network operator engagement during the pre-lodgement period to make it clear that the AER:

- will have an open dialogue with Network Operators prior to the submission of a revenue proposal
- expect that a Network Operator, where possible and appropriate, will incorporate the findings of any pre-lodgement stakeholder engagement into its revenue proposal.

Transgrid views on the amendments to section 3

Transgrid supports collaborative engagement with stakeholders in the pre-lodgement process and considers these changes are minor and consistent with the intent of the existing guidelines. However, to mitigate the stakeholder engagement issues raised earlier on the proposed preliminary positions paper, we encourage the AER to consider how it could formalise and strengthen this pre-engagement, including to formalise a commitment to prioritise AER resources and time to this early engagement to improve outcomes later in the process.

END OF SUBMISSION